

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

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FILE

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Applications of	)	MM DOCKET No. 92-183
	)	
WESTERN INSPIRATIONAL BROADCASTERS, INC.	)	File No. BPED-910923MF
	)	
BROAD SPECTRUM COMMUNICATIONS, INC.	)	File No. BPH-910925ME
	)	
PHOENIX BROADCASTING, INC.	)	File No. BPH-910926ME
	)	
NINETY-TWO SEVEN, LTD.	)	File No. BPH-910926MF
	)	
For Construction Permit for New FM Broadcast Station on Channel 224A at Chico, California	)	

TO: Honorable Edward J. Kuhlmann  
Administrative Law Judge

JOINT REQUEST FOR APPROVAL OF SETTLEMENT

Western Inspirational Broadcasters, Inc. (Western),  
Broad Spectrum Communications, Inc. (BSCI), Phoenix Broadcas-  
ting, Inc. (Phoenix) and Ninety-Two Seven, Ltd. (NTSL), by  
their respective attorneys, hereby respectfully submit this  
Joint Request for Approval of Settlement, and urge that the  
presiding Judge take the following actions: (1)approval of  
the settlement agreements appended hereto; (2)approval of  
cash consideration to be paid by Phoenix to Western;  
(3)dismissal of the applications of Western, BSCI and NTSL  
with prejudice; (4)acceptance of an amendment to the Phoenix  
application to reflect a new applicant, Chico FM, Inc.  
(CFMI), which is to be owned equally by Phoenix, BSCI and  
NTSL; (5)approval of the withdrawal by BSCI and NTSL of the  
integration proposals made in their respective applications;

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and (6) grant of the Phoenix/CFMI application, as amended. In support whereof, the following is shown:

1. There is attached hereto as Exhibit A a copy of an executed settlement agreement between Phoenix and Western, whereby Western agrees to seek the dismissal with prejudice of its above-captioned application, in return for Phoenix's agreement to reimburse Western's expenses reasonably and prudently incurred in the preparation, filing and prosecution of its application, to a maximum amount of \$5,000.00.

2. There is attached hereto as Exhibit B a copy of an executed settlement agreement by and among Phoenix, BSCI and NTSL. This agreement calls for the formation of a new corporation, CFMI, and the substitution of that entity for Phoenix as the applicant in File No. BPH-910926ME. Phoenix, BSCI and NTSL will each own 33-1/3 percent of CFMI. This agreement has been negotiated at arms length, and reflects a consensual allocation of economic risks and rewards among the merging parties. Therefore, it is a bona fide merger, and is consistent with Section 73.3525 of the Commission's Rules. See Amendment of Section 73.3525 of the Commission's Rules (Reconsideration Order), 6 FCC Rcd 2901, at ¶¶9-10 (1991); Venton Corporation, 90 FCC 2d 307, 51 RR 2d 1208 (1982). Indeed, this merger agreement is "cleaner" than the merger agreement approved in Venton; unlike Venton, where the dismissing applicant received both cash consideration and

an equity interest in the surviving applicant, in this case there is no up-front cash consideration involved in this deal. While there are rights of first refusal stated in the instant agreement, they can be exercised only after the Chico station has been on the air for over one year, when, consistent with Section 73.3597 of the Rules, there would be no restrictions on the assignment or transfer of the Chico station.

3. There is attached hereto as Exhibit C a proffered amendment to the Phoenix application to reflect the effectuation of the agreement among Phoenix, BSCI and NTSL. The parties believe in light of the global settlement proposed herein that there is good cause to so amend the Phoenix application thus, they seek that leave be granted so that this amendment might be accepted.

4. There is attached hereto the following additional exhibits, all of which contain the certifications required by Section 73.3525 of the Rules: Exhibit D, a "Declaration" of a principal of Western, which also itemizes reimbursable expenses and presents proof of said expenses; Exhibit E, a "Declaration" of Phoenix's President, Gary Katz; Exhibit F, a "Declaration" of BSCI's President, Paul Eric Dausman; and Exhibit G, a "Declaration" of NTSL's Vice-President, Wilber Johnson.

5. In separate pleadings, Phoenix has submitted: (1)an amendment as a matter of right pursuant to paragraph 3 of the Hearing Designation Order relative to steps to be taken to reduce RF radiation hazards to workers at its transmitter site; and (2)a Motion to Delete issue 1, the contingent environmental issue.

6. Therefore, all required documentation of this settlement agreement is being filed within the 20-day "appearance" period; as a result, the parties are this day filing a separate pleading pursuant to Section 1.1111(c) of the Rules with the Office of Managing Director, seeking a refund of the hearing fees paid by Phoenix, BSCI and NTSL in March, 1992 (Western, a non-commercial entity, was not required to pay this fee).

7. Furthermore, out of an abundance of caution, BSCI and NTSL seek approval of the presiding Judge to withdraw the integration proposals made in their respective applications. As a part of their merger agreement, the parties have determined that the Phoenix management team operate and manage the Chico station on a day-to-day basis. As it would therefore be impossible for BSCI and NTSL to effectuate their integration proposals, the parties seek approval of the presiding Judge of the withdrawal of their integration proposals. This approval is sought so that CFMI can correctly provide the Commission with the certifications

required in new Section 73.1620(g) of the Commission's Rules.

8. To conclude, the application of Phoenix, as amended to CFMI to reflect the merger agreement appended hereto, is a fully qualified applicant and may be granted immediately. The public interest, convenience and necessity is well served by such an action, which will enable broadcast service over Channel 224A at Chico to be commenced at the earliest possible time.

WHEREFORE, the parties hereto urge that the following actions be taken: (1)that the settlement agreement between Phoenix Broadcasting, Inc. and Western Inspirational Broadcasters, Inc. BE APPROVED; (2)that reimbursement of expenses as demonstrated by Western Inspirational Broadcasters, Inc. herein BE APPROVED; (3)that the application of Western Inspirational Broadcasters, Inc. BE DISMISSED WITH PREJUDICE; (4)that the merger agreement by and among Phoenix Broadcasting, Inc., Broad Spectrum Communications, Inc. and Ninety-two Seven, Ltd. BE APPROVED; (5)that leave to amend BE GRANTED, and that the amendment to the Phoenix application proffered herewith which changes the name of that applicant to Chico FM, Inc. and effectuates the matters stated in the merger agreement BE ACCEPTED; (6)that leave BE GRANTED to Broad Spectrum Communications, Inc. and to Ninety-Two Seven, Ltd. to withdraw the integration proposals made in their respective applications; (7)that the applications of Broad


Spectrum Communications, Inc. and Ninety-Two Seven, Ltd. BE  
DISMISSED WITH PREJUDICE; (8)that the application of Chico  
FM, Inc. for a construction permit for a new FM Broadcast  
Station at Chico, California (File No. BPH-910926ME) BE  
GRANTED; and (9)that this proceeding BE TERMINATED.

Respectfully submitted,

WESTERN INSPIRATIONAL BROADCASTERS, INC.

McNAIR LAW FIRM, P.A.  
1155 - 15th Street, NW  
Suite 400  
Washington, DC 20005  
Telephone: 202-659-3900

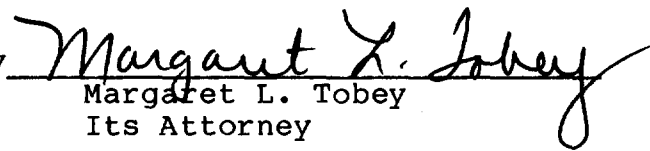
By

  
Stephen T. Yelverton  
Its Attorney

BROAD SPECTRUM COMMUNICATIONS, INC.

AKIN, GUMP, HAUER &  
FELD, L. L. P.  
1333 New Hampshire Ave., NW  
Suite 400  
Washington, DC 20036  
Telephone: 202-887-4377


By

  
Margaret L. Tobey  
Its Attorney

PHOENIX BROADCASTING, INC.

CORDON AND KELLY  
Post Office Box 6648  
Annapolis, MD 21401  
Telephone: 410-280-6290


By

  
Dennis J. Kelly  
Its Attorney

NINETY-TWO SEVEN, LTD.

DONALD E. MARTIN, P. C.  
2000 L Street, NW  
Suite 200  
Washington, DC 20036  
Telephone: 202-887-5070

By

  
Donald E. Martin  
Its Attorney

September 8, 1992

EXHIBIT A

## A G R E E M E N T

This Agreement, entered into this 6th day of September, 1992, by and between Phoenix Broadcasting, Inc., a California corporation (Phoenix) and Western Inspirational Broadcasters, Inc., a Nevada not-for-profit corporation (Western):

WHEREAS, Phoenix and Western are applicants before the Federal Communications Commission for a construction permit for a new commercial FM Broadcast Station on Channel 224A at Chico, California; and

WHEREAS, their applications are mutually-exclusive and only one can be granted; and

WHEREAS, the parties are desirous of reaching a settlement agreement in order to avoid costly and lengthy litigation and in order to allow commencement of service over Channel 224A at Chico, in order to serve the public interest, convenience and necessity:

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. The parties hereto agree to file with the Commission one or more documents entitled "Joint Request for Approval of Settlement" to resolve the Chico proceeding and to use their best good faith efforts during the pendency of said "Joint Request" to secure its approval. The parties further agree that all rights, duties and obligations stated herein are



subject to final approval of the Commission to this agreement and to a grant of the surviving application herein.

2. The parties also agree that a condition precedent to their respective rights and obligations hereunder shall be that Phoenix reach settlement agreements with applicants Broad Spectrum Communications, Inc. and Ninety-Two Seven, Ltd., at Chico, and that such settlement agreements be filed on or before September 8, 1992. In the event that these settlements are not entered into, this Agreement shall be null and void.

3. For the consideration stated within this paragraph, Western will request that the Commission dismiss with prejudice its application for FM Channel 224A at Chico. In consideration thereof, within five (5) calendar days of the date upon which the approval of this settlement agreement and the grant of the Phoenix application become final and unappealable pursuant to the Commission's Rules, Phoenix will pay to Western the cash sum of FIVE THOUSAND DOLLARS AND NO CENTS (\$5,000.00), or such lesser amount as the Commission may approve, as reimbursement for Western's expenses reasonably and prudently incurred in the preparation, filing and prosecution of its Chico FM application. Western will be solely responsible for providing the Commission with all necessary proof and documentation of its claim for reimbursement of expenses, in accordance with 47 CFR §73.3525.

4. Within five (5) business days of the date hereof, Phoenix will provide its communications counsel with funds in the amount of \$5,000.00 for placement in a suitable escrow account. The deposit slip and identification for this account will be provided to counsel for Western as soon thereafter as is possible. Any interest earned on this account will be the property of Phoenix.

5. The parties agree and understand that, other than the consideration stated herein, no consideration, direct or indirect, has been paid or promised by Phoenix or any other party to Western for its decision to dismiss its application.

6. Each of the parties hereto shall bear its own expenses in connection with its own application and with the preparation, review and execution of this Agreement and in any and all papers necessary to be filed with the Commission in support thereof.

7. It is further agreed and understood by both parties that any action taken by either of said parties in contemplation of or pursuant to this Agreement shall not in any way prejudice the pending applications of Phoenix or Western in the event that this Agreement is disapproved by the Commission; in such event, each party may do any and all things legal, proper and necessary to prosecute their respective applications.

8. Each of the parties agrees that all of the foregoing is subject to the applicable provisions of the Rules and Regulations of the Commission and the Communications Act of 1934, as amended.

9. This Agreement constitutes the entire agreement among the parties; and supersedes any prior agreement or understandings between them. The Agreement may not be modified or amended except through a subsequent written agreement. Except as otherwise provided herein, this agreement shall be binding upon and inure to the benefit of the parties and their legal representatives, heirs, administrators, executors and assigns. Except with respect to matters within the jurisdiction of the Commission and the federal courts having appellate review over Commission matters, this agreement shall be governed by and interpreted in accordance with the laws of the state of California.

10. If any provision of this Agreement, or the application of such provision to any person or circumstance shall be held invalid, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

11. Wherever in this Agreement it shall be required or permitted that Notice, payment or demand be given or served by either party on the other, such notice, payment or demand

shall be given or served and shall not be deemed given or served unless in writing and by hand delivery or sent by first-class United States mail, postage prepaid, to the following:

If to Phoenix:

Mr. Gary Katz  
Phoenix Broadcasting, Inc.  
Post Office Box 7568  
Chico, CA 95927

with a copy to:

Dennis J. Kelly, Esquire  
Cordon and Kelly  
Post Office Box 6648  
Annapolis, MD 21401

If to Western:

Mr. Robert T. Hesse  
Western Inspirational Broadcasters, Inc.  
6363 Highway 50 East  
Carson City, NV 89701

with a copy to:

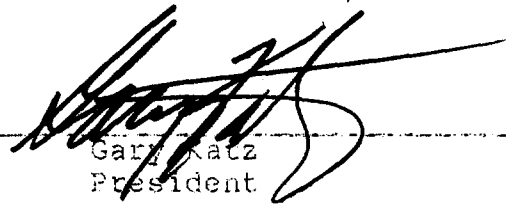
Stephen T. Yelverton, Esquire  
McNair Law Firm, P. A.  
1155 15th Street, N. W., Suite 400  
Washington, DC 20005

12. This Agreement may be executed in multiple counterparts, each of which, when all are executed, shall have the same effect as if the parties had executed a single instrument.

IN WITNESS WHEREOF, the parties hereto note their  
agreement below as of the date first written above.

PHOENIX BROADCASTING, INC.

By

  
Gary Katz  
President

WESTERN INSPIRATIONAL  
BROADCASTERS, INC.

By

Title

IN WITNESS WHEREOF, the parties hereto note their  
agreement below as of the date first written above.

PHOENIX BROADCASTING, INC.

By \_\_\_\_\_  
Cary Katz  
President

WESTERN INSPIRATIONAL  
BROADCASTERS, INC.

By Robert H. Long Robert Long  
Title Secretary

EXHIBIT B

## A G R E E M E N T

This Agreement, entered into this 7th day of September, 1992, by and among Phoenix Broadcasting, Inc., a California corporation (Phoenix); Broad Spectrum Communications, Inc., a Delaware corporation (BSCI); and Ninety-Two Seven Ltd., a Delaware corporation (NTSL):

WHEREAS, Phoenix, BSCI and NTSL are all applicants before the Federal Communications Commission for a construction permit for a new FM Broadcast Station on Channel 224A at Chico, California; and

WHEREAS, their applications are mutually-exclusive and only one can be granted; and

WHEREAS, the parties are desirous of reaching a settlement agreement in order to avoid costly and lengthy litigation and in order to allow commencement of service over Channel 224A at Chico, in order to serve the public interest, convenience and necessity:

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. The parties hereto agree to file with the Commission one or more documents entitled "Joint Request for Approval of Settlement" to resolve the Chico proceeding and to use their best good faith efforts during the pendency of said "Joint Request" to secure its approval. The parties further agree



that all rights, duties and obligations stated herein are subject to final approval of the Commission to this agreement and to a grant of the surviving application herein.

2. In order to facilitate this agreement, Phoenix, BSCI and NTSL agree to form a new California corporation, to be known as Chico FM, Inc. (CFMI), or such other corporate name as may be available for use in the state of California and is mutually-agreeable to the parties. Upon its incorporation, CFMI will be authorized to issue 3,000 shares of no par voting common stock, each share bearing equal voting rights, dividend rights and liquidation rights. CFMI will then issue to Phoenix, BSCI and NTSL (or the shareholders of BSCI and NTSL) 1,000 shares each of the common stock of CFMI. There will be no other classes or types of stock issued by CFMI.

3. CFMI will assume the application filed by Phoenix; an appropriate amendment to that application will be filed with the Commission simultaneously with the filing of the "Joint Request for Approval of Settlement" to reflect this arrangement. The Phoenix application, as amended to reflect the terms of this settlement, will be the surviving application. The parties will request the dismissal with prejudice of the BSCI and NTSL applications.

4. The parties agree and understand that there is no cash consideration to be paid by any of the parties to any other of the parties hereto in connection with this agreement, and that, except as may be stated herein, no other

consideration, direct or indirect, has been paid or promised by any party to any other party for the mutual promises made herein.

5. It is expressly agreed and understood by the parties that a condition precedent to the rights and obligations of the parties hereunder shall be the dismissal of the application of Western Inspirational Broadcasters, Inc. (Western). Phoenix has reached an agreement with Western, subject to the execution of a definitive settlement agreement, whereby Phoenix would reimburse Western's expenses reasonably and prudently incurred relative to its Chico application, such expenses not to exceed \$5,000.00, in exchange for the dismissal of Western's application. In the event that the Phoenix/Western settlement is not approved by the Commission, this agreement will thereupon terminate without any further obligations of the parties to each other.

6. Each of the parties hereto shall bear its own expenses in connection with its own application and with the preparation, review and execution of this Agreement and in any and all papers necessary to be filed with the Commission in support thereof.

7. It is further agreed and understood by both parties that any action taken by either of said parties in contemplation of or pursuant to this Agreement shall not in any way prejudice the pending applications of Phoenix, BSCI or NTSL in the event that this Agreement is disapproved by the Commission or terminated pursuant to paragraph 5 supra.

8. Each of the parties agrees that all of the foregoing is subject to the applicable provisions of the Rules and Regulations of the Commission and the Communications Act of 1934, as amended.

9. CFMI will be managed by a five member Board of Directors, of which three directors will be appointed by Phoenix, and one director each will be appointed by BSCI and by NTSL. This provision will be included in the By-laws of CFMI, and may be changed only by a unanimous vote of the stockholders of CFMI. The initial CFMI Board of Directors will consist of Gary Katz, Jerrie Lynn Rindahl-Katz, Eric Lemmons, Paul Eric Dausman and Wilber Johnson a/k/a Don Sainte-Johnn.

10. The affirmative votes of three directors will be required to authorize any corporate action of CFMI; provided that, in the following instances, which the parties deem not to be in the ordinary course of business, the affirmative votes of all five directors will be required:

a. Any amendment of the Articles of Incorporation or By-laws of CFMI.

b. Any increase or decrease in the number of directors constituting the whole Board of Directors.

c. Any merger, consolidation or sale, mortgage, lease or other disposition of all or any significant portion of the assets of CFMI, or liquidation or dissolution of CFMI, except as provided in paragraph 19 infra.

d. Any agreement to borrow funds or obtain credit where the personal guarantees of the stockholders of Phoenix, BSCI or NTSL is required.

11. The parties hereby agree to elect as officers of CFMI: Gary Katz as President and Treasurer; Jerrie Lynn Rindahl-Katz as Secretary; Paul Eric Dausman as Vice-President; and Wilber Johnson a/k/a Don Sainte-Johnn as Vice-President.

12. Phoenix will arrange for the financing of the new Chico FM station to be licensed to CFMI; CFMI's general offices and the studios and offices of the Chico FM station will be located at 555 E. Lindo Avenue, Chico, California.

13. The parties agree that Gary Katz will serve as General Manager of the Chico FM station. Katz will report to the Board of Directors. Katz will provide a full financial accounting to the parties for every six month period of said station's operation.

14. On the 367th calendar day subsequent to the date that the Chico FM station commences broadcast operations (the Trigger Date), and thereafter for a period of 30 calendar days (the Option Period), BSCI and NTSL shall have the following options with respect to their shares of CFMI stock: (i) an exchange of 1,000 shares of CFMI common stock for four (4) shares of Phoenix common stock, or some other number of Phoenix shares equalling four (4) percent of the issued and outstanding shares of Phoenix common stock, with no other consideration, direct or indirect, attaching to such exchange ("Option One"); (ii) a "put" of their respective shares for

cash consideration ("Option Two"); or (iii) a continuation of their respective stock ownership in CFMI ("Option Three"). To exercise Options One or Two, BSCI and NTSL will give written notice of their respective intentions to all parties hereto on or before the 30th day subsequent to the Trigger Date. In the event that such written notice is not made by a party within the period set forth in this paragraph, that party will be deemed to have selected Option Three herein.

15. In that event that both BSCI and NTSL exercise Option One, and subject to prior approval of the Commission, the shareholders of Phoenix will transfer that number of shares of the issued and outstanding common stock of Phoenix necessary to provide BSCI and NTSL each with four (4) percent ownership of the issued and outstanding common stock of Phoenix. In that event, CFMI will be merged into Phoenix for no cash consideration (this transaction will be hereinafter referred to as "The Merger"), and the parties agree in advance that Gary Katz may take all necessary corporate actions for CFMI, including the execution of necessary FCC applications, to effectuate The Merger.

16. In the event that NTSL, within the Option Period, does not wish to participate in The Merger but instead selects Option Two, it may, at its sole option, "put" its shares in CFMI to BSCI, at a fixed price of EIGHTY-SEVEN DOLLARS AND FIFTY CENTS (\$87.50) per share, to be paid in

cash within five (5) calendar days of the date upon which Commission approval of transfer of control of CFMI shall have become final and unappealable (the Closing Date). NTSL shall give BSCI written notice of its desire to "put" its shares of CFMI to BSCI; BSCI shall have 10 days thereafter to notify NTSL and Phoenix as to whether it will acquire NTSL's shares in CFMI. In the event that BSCI accepts the "put" and acquires NTSL's shares in CFMI, BSCI will have the right to exchange NTSL's 1000 CFMI shares for Phoenix common shares equal to four (4) percent of the issued and outstanding Phoenix common stock. In the event that BSCI declines to acquire said shares, Phoenix will be required to acquire said shares at the same fixed price of \$87.50 per share, payable in cash on the Closing Date specified in this paragraph.

17. In the event that BSCI, within the Option Period, does not wish to participate in The Merger but instead selects Option Two, it may, at its sole option, "put" its shares in CFMI to Phoenix, at a fixed price of EIGHTY-SEVEN DOLLARS AND FIFTY CENTS (\$87.50) per share, to be paid in cash on the Closing Date defined in paragraph 16 supra.

18. In anticipation of the exercise of Option One, Phoenix will provide the following minority shareholder protections to BSCI and NTSL:

a. Phoenix will take no action from the date hereof until and including the date of the consummation of The

Merger that will dilute the stock interests of BSCI and NTSL; in other words, upon The Merger, BSCI and NTSL will each be entitled to own stock in Phoenix equal to four (4) percent of the total issued and outstanding stock of Phoenix. Subsequent to The Merger, BSCI and NTSL will have "pre-emptive rights" in Phoenix; that is, in the event that Phoenix seeks to issue or sell stock or securities, Phoenix will give BSCI and NTSL written notice of its intention to so do, and BSCI and NTSL will have 30 days from the receipt of said notice to give written notice to participate on a pro rata basis in the purchase of such new issue of stock or securities. In the event that BSCI and/or NTSL fail to respond to said written notice within said 30 day period shall be deemed to be a rejection of their respective rights to participate in the purchase of the securities to be issued.

b. If BSCI accepts NTSL's "put" of the latter's stock in CFMI pursuant to paragraph 16 supra, and as a result BSCI is entitled to own eight (8) percent of the issued and outstanding shares of Phoenix's common stock, then BSCI will be: (i)entitled to appoint one member of the Phoenix Board of Directors; (ii)granted the minority shareholder protections stated in paragraph 10 supra; and (iii)have for one year, expiring on the first anniversary of the consummation of The Merger, the right to "put" all of its right, title and interest in all of its shares of the common stock

of Phoenix to Phoenix and/or its shareholders for a cash price of ONE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS (\$175,000.00) payable within sixty (60) days of the date of the written notice from BSCI to Phoenix in which the option stated in this sub-paragraph is exercised.

c. Except in connection with a sale of Registrable Securities pursuant to an effective registration statement under the federal Securities Act of 1933, as amended (the Securities Act), or Rule 144 of the Securities and Exchange Commission (Rule 144) pursuant to an effective registration statement under the Securities Act or Rule 144, no stockholder shall transfer any Registrable Securities to any person or entity unless:

i. such Registrable Securities bear the following legend:

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER THE SECURITIES LAWS OF ANY STATE; AND MAY NOT BE SOLD, ASSIGNED, TRANSFERRED, PLEDGED OR OTHERWISE DISPOSED OF EXCEPT IN COMPLIANCE WITH, OR PURSUANT TO AN EXEMPTION FROM, THE REQUIREMENTS OF SUCH ACT OR SUCH LAWS.

ii. if the transferee is not otherwise a party to this Agreement, the transferee shall have executed and delivered to Phoenix (with copies to all other shareholders), as a condition to its acquisition of Registrable Securities, a certificate confirming that such transferee takes such Registrable Securities subject to all the terms and condi-



tions of this Agreement and confirming that such transferee agrees to be bound by the same terms and provisions which were applicable to the transferor.

d. Neither Phoenix nor any stockholder of Phoenix shall take any action that would violate any securities or "blue sky" law of the United States or of the state of California.

e. In the event that Phoenix should sell any or all of its businesses prior to the time that The Merger is consummated, Phoenix shall hold the net proceeds after normal and prudent expenses from such sale or sales in its treasury, and shall not pay out or attempt to pay out any liquidating dividend(s) until either The Merger has been consummated or that, through lapse of time, the provisions of Option Three have taken effect.

f. Subsequent to the consummation of The Merger, in the event that the present shareholders of Phoenix attempt to sell, assign or transfer their stock interests to an unrelated third party, Phoenix shall give BSCI and NTSL written notice of such proposed sale, assignment or transfer at least 30 days prior to the consummation of such sale; in the event that BSCI and/or NTSL give Phoenix written notice within said 30 day period of their desire to sell, assign or transfer their respective stock interests in Phoenix, Phoenix will be required to sell, assign or transfer said stock interests of BSCI and/or NTSL on the same price, terms and conditions as